IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT APPEAL NO : 684 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 11-12-2003 in W.P.No.10355 of 1944 on the file of the High Court.)

Between:

1. The Oriental Insurance Company Ltd.

rep by its Chairman-Cum-Managing Director,
Oriental House : P.B.No. 7037, A-25/27,

Asaf Ali Road, New Delhi-2.

2 The Oriental Insurance Company Ltd.

rep by its Regional Manager,
Regional Office, Snehalatha Complex,

Greelands Road, Secunderabad.

3 The Oriental Insurance Company Ltd.

rep by its Branch Manager, 303,
Pushpanjali Complex, Koti, Hyderabad.

..... APPELLANTS

AND

Mohammed Naimuddin, S/o. Mujafferunddin,
R/o.1-9-241, Ram Nagar, Hyderabad - 48.

.....RESPONDENT

For the Appellants: SMT.A.ANASUYA, Advocate

For the Respondent : MR.T.V.L.NARASIMHA RAO, Advocate

The Court made the following :

ORDER:(Per GB,J)

This writ Appeal is filed by the Insurance Company, assailing the order passed by the learned single Judge in W.P.No.10355 of 1944 dated 11.12.2003.

2. The respondent filed the Writ Petition seeking declaration that he is entitled to be continued in service up to 60 years. He joined in the Company on 10-11-1964 on contract basis for issuing the Personal Accident (Aviation) Coupons at Begumpet Airport, on a commission at 15% and thereafter he was paid remuneration. However the consolidated amount was enhanced to Rs.175/- per month in the year 1978. In the year 1986 he was regularly appointed as Assistant (Clerical) by appointment order dated 13.11.1986 in the pay scale of Rs.520-30-670-45-850-60-1210-1660. However, when the respondent attained the age of superannuation, viz., 58 years, on 21.10.1984, he filed the above Writ Petition seeking declaration that he shall be continued up to 60 years. Initially this Court granted interim stay of retirement but subsequently the same

was vacated and ultimately the respondent was retired from service on 31.12.1994. The learned single Judge after hearing the parties concerned held that the respondent is entitled to be continued in service up to 60 years of age on the ground that he was serving the Corporation prior to 21.09.1984 and therefore he is entitled to reckon his service for purpose of retirement up to 60 years. The Insurance Company in the present Writ Appeal assails the said order.

3. The learned counsel appearing for the appellant-Insurance Company submits that the order of the single Judge is illegal and contrary to law. He submits that the respondent-employee was appointed on regular basis in accordance with the service regulations only from 13.11.1986 and prior to that, he was employed on contract basis and though he was granted some consolidated amount and commission, that cannot be construed as employment on regular basis for purpose of applicability of service rules for the purpose of retirement. He further submits that as per the notification issued by the Government on 21.09.1984, the persons who were appointed prior to 21.09.1984 are entitled to be continued in service up to 60 years and those who were appointed after 21.09.1984 are entitled to continue in service upto 58 years. Admittedly in this case the respondent-employee was appointed on 13.11.1986, and therefore he is liable to be retired at the age of 58 years and he cannot take advantage of 60 years as he was never employed on regular basis. Therefore the order of the learned single Judge is liable to be set aside.

4. Learned counsel for the respondent-employee submits that the respondent is entitled to be continued up to
60 years inasmuch as he has been serving the Company right from 1964 and therefore he must be deemed to be in service prior to 21.09.1984 and consequently he is entitled to be retired at the age of 60 years. He further submits that when he was appointed on 13.11.1986 on regular basis, he was granted five advance increments and that itself shows that he was employed prior to 21.09.1984 and on that ground also he is entitled to be continued in service up to 60 years. He also submits that under Regulation of 12 of the notification issued by the Government of India dated 21st September, 1984 it is only stated that the employee who is in service of the Corporation or a Company immediately before the notified date shall be entitled to continue up to

60 years. Inasmuch as the respondent-employee deemed to be an employee prior to 13.11.1986 the above Notification squarely applies to him and consequently he is entitled to be continued up to 60 years.

5. We have heard the learned counsel for the parties at length.

6. The admitted facts are that the respondent-employee was initially appointed on contract basis with a commission on the insurance premia and also some consolidated amount, but however, he was appointed on regular basis only from 13.11.1986. Therefore the question that calls for consideration is whether he is entitled to be continued in service either up to 58 years or 60 years.

7. The notification dated 21st September, 1984 is clear wherein it is stated that who joins the service of the Corporation or a Company immediately on or after the date of commencement of General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Amendment Scheme, 1984, shall retire from service when he attains the age of 58 years and others who were appointed prior to the said notified date are entitled to be continued in service up to 60 years.

8. The expression 'service of the Corporation' has to be interpreted. According to the learned counsel for the respondent-employee, the service of the Corporation shall include even service on contract basis also and inasmuch as the respondent-employee was appointed on consolidated basis and also on commission basis, he is entitled for the benefit of 60 years. This contention cannot be accepted for the simple reason that the service of the Corporation has to be construed only service in a regular manner i.e. the appointment should be in accordance with the rules. But in this case the respondent was appointed in accordance with the service rules of the Corporation only from 13.11.1986 and therefore any service put in by him in other capacity other than regular basis cannot be accepted as regular service. Mere fact that he has been given higher basic pay cannot be construed as appointment with retrospective effect. Higher basic may be granted to the employees for various reasons viz., for meritorious candidates, or for compensating earlier service.

The intendment of the rule is only to benefit to those employees who were appointed on regular basis prior to 21st September, 1984 and after 21st September, 1984. Thus viewed from any angle, we are of the considered view that the learned single Judge has not properly construed the matter and erred in holding that the respondent is entitled for 60 years of retirement. Accordingly we set aside the order of the learned single Judge.

9. In the result, the Writ Appeal is allowed. No order as to costs.

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G.BIKSHAPATHY, J

Dated: 07.07.2004

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B.SESHASAYANA REDDY, J

LSK

JOINT REGISTRAR

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SECTION OFFICER.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday the Seventh day of July Two thousand and Four.

One fair copy to Hon'ble Sri Justice G.Bikshapathy (for his Lordship's kind perusal).

To

1. The Oriental Insurance Company Ltd.

rep by its Chairman-Cum-Managing Director,
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4. Two C.D.Copies.

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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